

**Advisory Action**

Application No.

09/937,185

Applicant(s)

OHTSUKA ET AL.

Examiner

Sara W. Crane

Art Unit

2811

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 17 December 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See "NOTE" for 2(b), and reasons of record.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: as in the final Office action.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_.

  
Sara W. Crane  
Primary Examiner  
Art Unit: 2811

Continuation of 2. NOTE: The amendments to the specification change the description of the figures. The specification as filed states, for example, that Fig. 2 shows a perspective view of the light-emitting thyristor matrix array shown in Fig. 1, and Figure 1 is stated to be the structure disclosed in the prior art (page 2 of the specification). The amendment changes the statement to have a different meaning, i.e., that Figure 2 shows a "circuit" that has been "rearranged." Figure 2 does not seem to be a "circuit," and, more importantly, there is no evidence of record to show that this figure is a "rearrangement" of a prior art structure. The other amendments have a similar problem. Examiner notes that applicant has included an Inpadoc printout which shows that Japanese reference 3-194978 is of the same family as Japanese Patent No. 2807910 (which is stated in the specification to be the prior art). However, two patents in the same family need not contain the same teachings or disclosure. The rejection set forth in the final Office action is based on the statements in the specification describing a prior art issued patent (Japanese Patent No. 2807910). If the statements in the specification describing the prior art are incorrect, then convincing evidence of this needs to appear in the record. The strongest evidence would be a copy of the prior art document itself, preferably accompanied by an English language translation. The examiner has been unable to obtain a copy of the Japanese document No. 2807910, but the applicants themselves must surely have a copy. Why not provide this? Does applicant have any explanation for why a copy of the teaching cannot be provided to the examiner? If a copy of the prior art document cannot be provided, then the usual approach would be to provide a declaration or declarations, attested to by the inventors themselves, stating specifically what teachings appear in the prior art. Attorney arguments or reassurances are not usually accepted as evidence by an examiner.